

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.622 OF 2005

Shri Dilip Ramchandra Shinde. ... Appellant
(Orig. Plaintiff)
Versus

1. Nashik Municipal Corporation,
Nashik.
2. Deputy Commissioner (Administration),
Nashik Municipal Corporation,
Nashik. ... Respondents
(Orig. Defendants)

Mr.C.J. Sawant, Senior Advocate with Mr.R.G.
Ketkar for appellant.

Mr.R.S.Apte for respondents.

**CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.**

Date: 20th September 2005

JUDGMENT : (Per H.L. Gokhale, J.)

1. This First Appeal by the original plaintiff (appellant herein) seeks to challenge the judgment and decree dated 1st February 2005 passed by the II Joint Civil Judge, Senior Division, Nashik in Special Civil Suit No.24 of 2004 to the extent it substantially declines the prayers made in the Suit while granting the same to a very limited extent. The appellant is an Advocate who had filed the said Suit for recovering the legal fees from the 1st respondednt-Nashik Municipal Corporation.

Respondent No.2 to the Appeal (defendant No.2 in the Suit) is the Deputy Commissioner (Administration) of the said Municipal Corporation. Since this is an Appeal of an Advocate for his fees, an earlier Division Bench directed the same to be heard finally at the admission stage itself. That is how the same is being heard out of turn.

2. Brief facts leading to the filing of this Appeal are as under:-

. The appellant is an Advocate of some standing, practising in the District Court at Nashik. Earlier also he worked as a Legal Advisor for the Nashik Municipal Council (as it then was). He has represented it in various Land Acquisition References where the 1st respondent-Municipal Corporation has been the acquiring body. As far as the present matter is concerned, the 2nd respondent wrote to him on 5.10.2001 asking him to appear for the 1st respondent in two Land Acquisition References bearing Nos.250 of 1991 and 251 of 1991 which were filed by one Purandare Trust at Nashik. The appellant wrote back on 9.10.2001 informing that his fees will be 3% on the claim in the Reference. Respondent No.2

replied on 19.11.2001. In that reply, he informed the appellant that the Municipal Corporation had granted approval for the fees of the Advocates at certain rates for different types of matters. As far as the Land References are concerned, it was stated that the fees will be as per the Government scales. The appellant did not send any further letter but appeared for the respondents in the said two References. Thus, it can be stated that the appellant accepted the offer of the 2nd respondent, made on behalf of the 1st respondent, by performance and conduct, the appellant not having made any counter offer and not having stated anything to the contrary after the respondents proposed that the fees will be as per the Government scales.

3. The two References thereafter proceeded. In the first Reference No.250 of 1991 against the claim of Rs.21,99,75,524/-, the Reference Court awarded Rs.35,79,937/-. In second Land Reference No.251 of 1991 as against the claim of Rs.1,55,67,001/-, the Reference Court awarded Rs.3,73,123/-. The appellant claimed the Advocate fees of Rs.97,316/- for Land Reference No.251 of 1991 and Rs.13,64,649/- for Land Reference No.250 of 1991. The total on this count came to

Rs.14,61,965/- . The appellant made this claim on the basis of the High Court Notification laying down the Advocate's fees to be fixed in the Bill of Costs by the District Courts which is in force from 14.3.1980. As per the said Notification, where the subject matter of the Suit is Rs.20,001/- or above, the Advocate's fees taxed therein would be Rs.900/- plus 0.625% of the amount in excess of Rs.20,001/-. The Standing Committee of the 1st respondent passed a Resolution on 9.9.2002 according approval to this payment and directing that a cheque for Rs.14,61,965/- be issued. However, an objection was raised thereafter. The Municipal Commissioner raised a query as to whether the payment was as per the Government scales and called for the Government Notification.

4. At that stage, the Notification dated 15th November 1984 of the Law and Judiciary Department was looked into by the Authorities concerned. This Notification lays down the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules (for short "Maharashtra Law Officers Rules"). Rule 24 of these Rules provides for the fees of the District Government Pleader and Public Prosecutor at district headquarters.

Rule 24 reads as under:-

" 24. District Government Pleader and Public Prosecutor at district headquarters. (1) The District Government Pleader and Public Prosecutor at district headquarters shall be entitled to the fees at the following rates namely:-

(A) In all civil cases-

(a)

(b)

(c)

(d) for appearance in reference to a civil court under the Land Acquisition Act, 1894 - (i) if the amount of compensation is in dispute, his fees shall be calculated on the difference between the amount of compensation awarded by the Collector and the amount of compensation claimed in the reference to the court;

(ii) in other cases, including cases not decided on merits, the usual fees as are actually taxed as costs by the concerned court according to law:

Note - The fees admissible under sub-clause (i) or (ii) are payable subject to the condition that not more than Rs.3,000/- shall be payable in a single case and not more than Rs.5,000/- shall be payable in group matters where Land Acquisition References or cases are clubbed together, evidence is recorded by the court in one or two cases, or the cases disposed of by one common judgment.

"

In view of the above Rule, the said payment was not released.

5. The appellant, therefore, filed the above-referred Special Civil Suit No.24 of 2003 and in prayer (a) thereof claimed the amount of Rs.14,61,968/- plus interest at the rate of 12% p.a. from 1.8.2002 till the filing of the Suit i.e. upto 31.12.2002 amounting to Rs.58,478/- making the total of Rs.15,20,446/- and claimed further interest at the rate of 12% p.a. from the filing of the Suit till realisation. The respondents contested the Suit by filing a Written Statement. The learned Judge framed the necessary

issues. Parties led their evidence thereon and the learned Judge, after hearing the arguments, came to the conclusion that in view of the above quoted rule, the appellant was entitled to the fee of Rs.5,000/- under the Note to the above-referred Rule 24(1)(A)(d) of the Maharashtra Law Officers Rules. He, therefore, directed the respondents to pay to the appellant a sum of Rs.5,000/- with interest at the rate of 12% p.a. thereon from the date of the Suit till realisation. The appellant is aggrieved by the denial of the claim made by him to a substantial extent and, therefore, the present Appeal.

6. The point which comes up for our determination is whether the learned Judge erred in holding that the Law Officers Rules governed the fees of the appellant. Mr.Sawant, learned Counsel appearing for the appellant, firstly submitted that the respondents had erred in applying the provisions of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules. His submission was that inasmuch as the above-referred letter dated 19.11.2001 from the Municipal Corporation stated that the fee will be as per the Government rates, the respondents were expected to pay the fees to

the appellant as per the Notification of the High Court whereunder the Advocate's fees are to be arrived at when the Bill of Costs is finalised by the District Court. The appellant had made his calculations on the same basis. He referred to the Minutes of the Standing Committee whereunder initially there was a decision to pay the fees as per the claim lodged by the appellant. That was not disputed by the witnesses of the respondents. He pointed out that the appellant had appeared for the respondents in some other References also whereunder the fees were paid by the respondents in the manner in which the fees are arrived at while finalising the Bill of Costs. Thus, he pointed out that in five other References where the fees were not very high the same were calculated as per the High Court Notification on Bill of Costs. Those References and the fees paid therein are as follows:-

S.No.	Land Ref. No.	Name of party	Claimed amount	Advocate fee
1.	36/92	Shri Ranade	1,50,000/-	1,731/-
2.	30/92	Shri Bedmutha	92,750/-	1,376/-
3.	31/92	Shri Maid	1,45,279/-	1,702/-
4.	32/92	Vanmali	1,25,750/-	1,580/-
5.	33/92	Vanmali	1,45,236/-	1,701/-

Mr.Sawant, therefore, submitted that if the respondents applied the yardstick of the Bill of Costs in making other payments, there is no reason why the same should not be applied in Land Reference Nos.250 of 1991 and 251 of 1991.

7. Mr.Apte, learned Counsel appearing for the respondents, on the other hand, submitted that in all these References the Reference proceeds against the State Government which is an essential party thereto although the acquiring body is also joined as a respondent, since the enhanced amount, if granted, is to be paid by the acquiring body. He drew our attention to the two Bills of Costs in the two Land References bearing Nos.250 of 1991 and 251 of 1991. The Bills of Costs did mention the Advocate's fees as Rs.13,64,649/- and Rs.97,316/- respectively but he submitted that this was the fee included while drawing the costs to be paid to the successful party. Both these Bills of Costs show the names of the appellant as the Advocate for opponent No.2 as well as that of one Shri S.P.Mane as the District Government Pleader for the referer State. He submitted that this amount could not be said to be meant only for the appellant in any case. That apart, his first submission was

that these are the fees to be considered as payable to the successful party while finalising the figure of costs payable to him. This cannot be a fee to be paid to the Advocate of the concerned party. The costs is to be paid to the successful litigant which has a component of these fees as per the scale. As far as the fees to be paid to the Advocate are concerned, that is a matter of contract between the parties. In the instant case, the respondents had clearly written that the fees will be as per the Government scales. If that approach was not to be accepted, it will mean that the Government Pleader will get the fees as per the Government scales but the Advocate for the acquiring body will get much more fees as per the claim made by the appellant. In his submission, that was certainly not intended by the respondents.

8. We have considered the submissions of both the Counsel. In our view, the factual and the legal position is quite clear. It is seen from the record that the Municipal Commissioner clearly informed the appellant that his fees will be as per the Government scales. That was recorded in his letter dated 19.11.2001. There is no counter offer of the appellant thereto. Therefore, there cannot be any dispute that the fees have to be as per the Government scales. The question comes up as to what is the

meaning of the words "as per the Government scales". Can it mean the fees as prescribed in the High Court Notification while finalising the Bill of Costs or will it mean the fees prescribed by the State Government in Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules? In our view, the submission of Mr.Apte is correct. When the Municipal Commissioner wrote to the appellant that his fees will be as per the Government scales, it will have to mean the fees as per the above-referred Maharashtra Law Officers Rules.

9. As far as the submission of Mr.Sawant with respect to the payments in other matters is concerned, it is seen that those figures are exactly as per the High Court Notification while drawing the Bill of Costs. The above-referred Rule 24(1)(A)(d)(ii) of the Maharashtra Law Officers Rules provides that where cases are not decided on merits, the fees will be as are actually taxed as costs by the concerned Court according to law. In cases decided on merits the fees are calculated on the difference between the amount of compensation awarded by the Collector and the amount of compensation claimed in the Reference. Clause (d)(ii) indicates that the Notification for arriving at the fees in the Bill of Costs has a relevance in cases where they are not decided on merits. In other

cases, however, where the amount of compensation is in dispute, as per the Government Notification also, the fees could be higher. However, it is to be noted that under the Note to Clause (d) the fees admissible under both these clauses have a upper ceiling of Rs.3,000/- in a single case and Rs.5,000/- in group matters.

10. There is no dispute that the two Land References bearing Nos.250 of 1991 and 251 of 1991 were such which would fall under Clause (d)(i) of the Maharashtra Officers Rules and the other five cases which we have mentioned earlier also fall under Clause (d)(i) of the Maharashtra Law Officers Rules. They were all contested cases. Besides, Land Reference Nos.250 of 1991 and 251 of 1991 had been admittedly heard together.

11. Hence, the computation of fees in Land Reference Nos.250 of 1991 and 251 of 1991 must be made as per the taxed bills subject to the upper limit fixed under the note to the aforesaid Rule 24(d).

12. In view of what is stated above, in our view, there is no error on the part of the learned Judge in awarding Rs.5,000/- as the fees for the two cases which were tried together.

13. Mr.Sawant, learned Counsel appearing for the appellant, contended that since in the other five Land References the computation of the appellant's fees has been made as per the Bill of Costs, the respondents are estopped from contending that in Land Reference Nos.250 of 1991 and 251 of 1991 the computation should be otherwise made. He contends that, that is sought to be done only because in these cases, the actual amount of fees payable to the appellant far exceeds his fees in other Land References. We do not see any merit in the plea of estoppel in view of what is stated above and the ceiling limit on fees under Rule 24(d) of the Maharashtra Law Officers Rules.

14. Mr.Sawant lastly submitted that the Standing Committee and the other officers of the 1st respondent-Municipal Corporation had, in fact, decided to clear the payment as per the claim made by the appellant and the Municipal Commissioner could not rescind it. In our view, the Municipal Commissioner was fully within his powers to pass the necessary orders. A wrong decision by other Authorities cannot be a basis for a wrong decision by another Authority and this Court cannot compel another Authority to repeat that illegality over and over again as held by the Apex Court in the case of **Chandigarh Administration & anr. vs. Jagjit Singh & anr.**

reported in AIR 1995 S.C. 705.

15. In the circumstances, the Appeal is dismissed.
There will be no order as to costs.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)